UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL INC., COMEDY PARTNERS, COUNTRY MUSIC TELEVISION, INC., PARAMOUNT PICTURES CORPORATION, and BLACK ENTERTAINMENT TELEVISION LLC,	)	
Plaintiffs,	)	
vs.	)	Case No. 1:07CV02103
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	
THE FOOTBALL ASSOCIATION PREMIER LEAGUE LIMITED, BOURNE CO., et al., on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	
vs.	)	Case No. 07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and GOOGLE, INC.,	)	
Defendants.	)	

VIDEOTAPED DEPOSITION OF SHASHI SETH
New York, New York
Thursday, July 16th, 2009

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO: 17168

July 16, 2009

8:09 a.m.

VIDEOTAPED DEPOSITION OF SHASHI SETH, held at the offices of Jenner & Block, 919 Third Avenue, New York, New York, pursuant to notice, before before Erica L. Ruggieri, Registered Professional Reporter and Notary Public of the State of New York.

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IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the Court.

SETH

A. It's about a dozen.

Q. Now, while you were still product lead of search, do you recall 08:19:51 Google acquiring YouTube?

A. Yes.

Q. And were you involved in any way in the decision by Google to acquire YouTube?

08:20:02 A. No.

Q. And while you were product lead of search at Google, did you work on any aspect of YouTube?

A. No.

08:20:12 Q. Now, if you go back to Exhibit 1, it indicates that when you left your position as product lead of search, January of 2007, you subsequently became the head of monetization at YouTube 08:20:33 thereafter, in the same month, January of 2007; is that correct?

A. That is correct. There wasn't a title defined right away, but over the course of next couple months that was the 08:20:47 title that I set into the job with.

SETH

Q. So within a couple months of joining YouTube, you received a title of head of monetization?

08:20:57 A. Uh-hum.

Q. And was there any title that you had when you first started?

A. No.

Q. Just going back for a moment to

08:21:07 your time as product lead of search, did you work on any aspect of search for video?

A. No.

Q. And how long were you head of

08:21:23 monetization -- sorry. How long were you working at YouTube?

A. Roughly 16 months, 17 months, something like that.

Q. And am I correct that you left

08:21:38 in about May of 2008?

A. Right. My exit from Google was in June of 2008.

Q. And were you working on YouTube-related projects until June of

08:21:52 2008?

SETH

A. Yes.

Q. And what was the reason for your leaving your job at YouTube?

08:22:00 A. I wanted to go back to a slightly smaller setup. And the industry looked inside Google for other opportunities, and once I couldn't find anything, I decided to go join Cooliris.

08:22:23 Q. So did you leave your job at YouTube voluntarily?

A. Yes.

Q. Now, going back to January of 2007, when you switched from product lead

08:22:38 of search to head of -- to YouTube, what were your job responsibilities?

A. Initially, my job was to help figure out what the business model for YouTube was. And I would say we probably

08:22:57 spent four to eight weeks looking at various aspects of that, and then over the course of that period it became clear that taking on this role would make a lot of sense.

08:23:10 Q. And when you say "this role" --

SETH

A. As head of monetization of YouTube.

Q. When you -- just a moment ago you said, we probably spent four to eight weeks looking at various aspects of the business model for YouTube.

Who were you referring to, when you said "we"?

A. I was working closely with Steve and Chad, the founders of YouTube, as well as with some engineers and product managers at YouTube.

Q. And when you say "Steve and Chad." You were referring to Steve Chen and Chad Hurley?

A. That's correct.

Q. With respect to the other engineers and product managers, do you recall who they were?

A. Yes. Matthew Liu, L-I-U, Shiva Rajaraman and Franck Chastagnol, Maryrose Duntan. And one more, Jamie Byrne, J-A-M-I-E, B-Y-R-N-E.

Q. And over the course of the, I

SETH

think you said four to eight weeks when you were looking at various aspects of the business model, did you have in-person
08:24:54 meetings with the people that we were -- that you just listed?

A. Absolutely.

Q. And what kinds of things did you discuss in those meetings?

08:25:04 MR. WILLEN: Objection to form.

Q. You can answer.

A. Most of our meetings -- sorry, could you restate the question.

Q. Sure. During those meetings in
08:25:21 the four to six -- four- to eight-week period when you were looking at various aspects of the business model, what kinds of topics did you discuss in the meetings?

A. The topics that we discussed
08:25:32 mostly were what are the ways that we can monetize YouTube. Looked at various ways one could do that. We discussed them in details, built business models and cases around it.

08:25:58 Q. And when you say that you built

business models and cases around these different ways to monetize YouTube, was that documented in a written form?

08:26:11 A. Yes. And they most likely are on my computer.

Q. And you are referring to a computer you still have in your possession?

08:26:24 A. No. This is the computer that I turn in to Google when I left the company.

Q. And those types of, the business models that you mentioned, what kinds of -- were those -- what kinds of

08:26:41 documents, what types of written documents would those be?

MR. WILLEN: Objection to the form. It's ambiguous.

Q. Would they be Word documents,

08:26:52 Excel documents, Powerpoints?

A. Yes, all of those.

Q. And do you recall whether you e-mailed those documents, or those documents were e-mailed back and forth

08:27:14 between the various persons you listed

earlier?

A. I am certain, yes.

Q. And do you also during this

08:27:32 period, this four- to eight-week period, do you recall using Google Docs or spreadsheets or I think what internally might have been called Rightly or Tricks?

A. For some aspects, yes.

08:27:50 Q. So some aspects of the business models that you were discussing and were documented in written form were documented on Rightly or Tricks?

A. Could be.

08:28:13 To further answer the question, I don't recall exactly which documents, but in the course of working, we use all the sources you mentioned, like Excel, Powerpoint, Word, as well as Google Docs.

08:28:27 Q. And did you also -- just to clarify, your statement just now about the types of documents that you used, does that extend throughout the time that you worked at YouTube?

08:28:39 A. Yes.

SETH

Q. And did you also use any type of wiki when you were at YouTube?

A. Yes.

08:28:57 Q. Can you describe generally how you would use the wiki, what types of information you would document on the wiki?

A. Mostly project-related

08:29:08 information. So if it were a certain project and the information related to the project, what we were going to work on, who was working on it, what problems, et cetera, would be documented in the wiki.

08:29:22 Q. And did --

MR. WILKENS: Strike that.

Q. When you first joined YouTube, did you interview with anybody for that position?

08:29:46 A. Steve Chen and Chad Hurley.

Q. Anybody else besides those two?

A. No.

Q. And in those interviews did they describe to you the kinds of work that

08:30:01 they envisioned for the position that you

were interviewing for?

A. Yes. I wouldn't describe it as much as an interview as a very long

08:30:14 conversation.

Q. And can you just describe the -- in that, those very long conversations, what -- how Steve Chen and Chad Hurley envisioned the position that you were

08:30:34 considering taking?

A. So we discussed what, their thoughts about what the important things related to YouTube's both near-term and long-term future were and where they could

08:30:56 use the most amount of help from an experienced person like me.

Q. And what were the important things that they -- that they mentioned for the future of YouTube?

08:31:09 A. From what I can recall, mobile was a very important aspect that we discussed and how being on mobile platforms would be something that would be extremely useful for users; as well as

08:31:39 expanding into international locales,

SETH

mobile platforms would be useful as well.

We discussed community aspects, and then the one particular program that 08:31:53 we discussed was starting a program called the YouTube user program, User Partner program, to help users who were active contributors to YouTube in uploading videos and being able to monetize their 08:32:15 content and compensate them for those efforts.

Q. Is there anything else you can recall?

A. No.

08:32:26 Q. You mentioned just a minute ago community aspects.

What were you referring -- what does that refer to?

A. How community members or users 08:32:38 of YouTube interact with YouTube, whether it is leaving comments or setting up tags or organizing information and so on.

Q. And do you recall discussing why that, those community aspects were 08:32:58 important for the future of YouTube?

SETH

A. From what I can recall, it was a conversation with Steve Chen where he thought that the community aspects were
08:33:15 one reason why YouTube was so successful and that we should spend more time refining that process.

Q. When you first joined YouTube, can you describe how, if at all, the
08:33:45 YouTube website was being monetized?

A. When I first came to YouTube, I believe that for a short period of time before I arrived it had been running remnant advertising inventory on pages of
08:34:17 YouTube in the form of a leader board or banner advertising as someone in the industry.

Q. And when you say that the remnant ads or banner ads were being run
08:34:32 on pages, were they being run on watch pages?

MR. WILLEN: Objection to the extent that I think you inflated remnant ads and banner ads. I don't
08:34:44 know if that was intended.

SETH

Q. If you understand the question, you can answer it.

A. There were banner ads being run.
08:34:53 I do not distinctly remember all the pages they were being run in, but there is a good chance that they were being run on the watch pages.

Q. Do you recall any pages that the
08:35:11 banner ads were being run on when you first joined YouTube?

A. From what I recall, I recall them being on many, many pages. I cannot tell you exactly which pages they were on,
08:35:27 but they were -- they are on many pages.

Q. And I think you said earlier, that -- let me ask you, sorry to go back to this issue, about remnant versus banner ads.

08:35:45 Can you define what a remnant ad is?

A. A remnant ad is an ad that comes from a network that is being used by the website as a fallback to some other form
08:36:04 of advertising; meaning if you cannot fill

partners?

A. No.

Q. Now, with regard to the UGC partners that you mentioned you had contact with, was that in connection with the project that you mentioned discussing with Steve and Chad, I believe maybe originally it was referred to as Claim Your Content for users; is that correct?

A. That is correct.

Q. And then the name of that changed later?

A. To the YouTube User Partner program.

Q. And is it in connection with that program that you had contact with the UGC partners?

A. Yes.

Q. When you first started at YouTube what -- what projects -- what monetization-related projects were you involved in?

MR. WILLEN: Objection to the form.

SETH

Q. You can answer.

A. The first project that we undertook was the YouTube User Partner
08:46:52 program. And at the same time we were experimenting with various ideas on how to monetize YouTube content, and I would say we ran those experiments for a period of three to four months, testing ideas like
08:47:21 how pre-rolls performed and other forms of video advertising-related ideas. That's how we started.

Q. And in addition to those -- in addition to the YouTube Partner program
08:47:57 and the experiments in advertising you just mentioned, over the course of your time at YouTube what, if any, other projects on monetization did you work on?

A. Sure. The first one would be
08:48:15 the video advertising units that we created. So on the watch pages we developed the overlay ad model, launched that in August of 2007; and combined the overlay with a companion banner unit, also
08:48:37 on the watch page, and held a price and

advertising units, the targeting ads, the home page monetization, search-related advertising components and user -- and
08:50:22 user engagement.

Are there any other monetization projects that you can recall working on while you were at YouTube?

A. Each of these projects have many
08:50:36 components to it, so it's hard to break each one of them down. But anything related to these ad models or revenue models was undertaken by my team.

Q. And for each one of these, if we
08:51:01 can maybe just go through them in order. I'm going to ask you sort of who else on your team or who else at YouTube worked with you on them, I guess taking first the YouTube User Partner program.

08:51:14 A. I built the YouTube partner program myself in the beginning and provided all care and feeding for it until we decided to take it out of the pilot program, which probably ran through August
08:51:33 of 2007, and then handed it over to Thai

SETH

Tran on my team, who then took it from there to the next level.

Jay Akkad built the contest
08:51:54 platform, the user engagement platforms.

Matthew Liu worked on the search elements.

Shiva Rajaraman worked on the video advertising, on the watch page, the
08:52:27 overlays and the companion banner units.

And Tracy Patrick Chan worked on all date-related projects.

My team also owned all data-related projects. And this group of
08:52:52 product managers had a team of engineers dedicated for these projects, which was managed by Franck Chastagnol.

Q. I think you said before that Franck Chastagnol didn't report to you.

08:53:12 But he -- but am I correct that he -- he managed this team of engineers that did service the team that you just listed?

A. Exactly.

08:53:22 Q. Now, earlier when you listed the

SETH

The pilot was meant to last several months. I think we ran it for literally five or six months. And the
08:58:00 goal was to see how well the user partners would perform, how motivated and engaged they would be and how successful we would be in monetizing that content and, in return, sharing that money with the user
08:58:18 partners.

Q. And how successful did that pilot turn out to be?

A. I would describe it as very successful. We started with, from what I
08:58:36 can recall, roughly about 35 people, I believe. And by the time the pilot finished, we probably had 100 to 150 people in the program.

And each of those partners was
08:58:57 engaged in creating new content and uploading new content, and we were definitely successful in monetizing and sharing revenues back with them. So overall, I think all the partners were
08:59:11 happy that they were now receiving a

SETH

compensation for their efforts.

Q. And then did that project move beyond the pilot phase to roll out to a

08:59:26 larger number of partners?

A. Yes. In, from what I can recall, in November 2007 we decided to expand the program, and Thai Tran was leading the effort at that time with the

08:59:46 goal to expand that program to several thousands of users and provide better targeting, better advertising opportunities and so on.

But also to scale the program,

08:59:58 so that there was very limited, if any, human involvement in running of the program.

Q. And do you recall approximately how many users were in this program when

09:00:27 you -- in the YouTube user program when you left the company?

A. I would say several thousand.

Q. And going back to the pilot for a minute. How did you select the users

09:00:54 that would be included in the pilot?

SETH

technologies or human review applied to ensure that the content that was part of the program did not have copyright
09:27:48 violations?

MR. WILLEN: Objection to the form.

A. Repeat that question, please, or rephrase it. I'm not sure how to answer
09:28:04 that.

Q. So you mentioned that the videos that were part of the program underwent audio fingerprinting and then subsequently video fingerprinting when that came
09:28:16 on-line; is that correct?

A. That is correct.

Q. Was any other kind of technology to detect copyright violations or any kind of human review applied to those videos,
09:28:31 before they were monetized through the program?

A. In the pilot process we did, for a period of time, have all videos go through a human review process, just to
09:28:50 make sure that the pilot would get off the

ground well. As time went on, we removed prescreening, so to speak, of the videos and moved the human review process to only
09:29:09 apply if any of those monetized videos were flagged by the user community.

So the process is run it through the fingerprinting technology to whatever capability existed at that point. If it
09:29:34 passed that test, monetize the video.

Should any of those videos get flagged, then perform a human review to pass an additional judgment whether there was any infringing -- sorry, copyright
09:29:52 violations, so to speak.

Q. But -- and the process you just described is the process that was adopted after you stopped prescreening; is that correct?

09:30:08 A. Repeat that.

Sorry, my mind was --

Q. Sorry about that. I wasn't very clear.

So from my understanding, there
09:30:19 were two, kind of two phases --

SETH

A. Yes.

Q. -- for the pilot, and I don't know for what period. There was a prescreening human review before monetizing the videos in the program; is that correct?

A. That is correct.

Q. And then at some point the prescreening was stopped, and instead the human review would only occur if there was a flag by someone in the user community when they watched a video that was already up -- available for monetization?

A. That is correct.

Q. All right. Do you recall approximately when this switch from the prescreening to the review after flagging occurred?

A. My guess would be three months after we started the pilot project.

Q. And why was there a switch in the process from prescreening to the review after flagging?

MR. WILLEN: I don't know

SETH

A. For a very short period of time, I would say five days or so at the start of the program, I myself as well as a
09:36:55 gentlemen by the name of George Strompolos who was part of the business development and operations team, reviewed the videos. And then at the end of that five-day, roughly five-day period, we handed it off
09:37:15 to the operations team. I do not know exactly the names of the people who were involved on the operations side.

Q. Do you know who was kind of heading up the operations team that did
09:37:34 the review?

A. The review process was headed by the name of Shenaz, S-H-E-N-A-Z, Zack, Z-A-C-K.

Q. And during the five days or so
09:37:51 that you were, yourself, involved in the prescreening, what were you looking for when you were reviewing these videos?

A. Just a cursory glance to kind of ensure that the content being uploaded
09:38:16 actually did belong to the user partners

any written or oral guidelines about what to look out for?

A. No.

09:54:43 Q. Do you know whether, after your involvement ceased, and I think you said the operations team took over, whether there were written guidelines for the reviewers about what to look for?

09:55:06 A. From my recollection, I think there was.

Q. And did you -- do you know what any of those guidelines were?

A. No.

09:55:12 Q. You mentioned, I think, that someone named Shenaz Zach was in charge of the team that was doing the human review, correct?

A. Yes.

09:55:26 Q. And so -- I'm sorry, is that a she or a he?

A. She.

Q. Would she be the best person to talk to about what written guidelines

09:55:39 there were for review?

SETH

Q. And then what's your general understanding of what the squad operations team was responsible for at YouTube?

10:03:20 A. It was responsible for, and this is my understanding. I'm sure you may get a very different answer from people who ran that program or that group. My understanding is, very simply, that they

10:03:38 provided the human review process for all flagged videos, regardless of whether they were in this program or not.

Q. And so, just returning for one second to squad's role with respect to the

10:03:57 specific User Partner program, I think, correct me if I'm wrong, my understanding is they got involved with the human review after you stopped doing it after the first five days; is that correct?

10:04:07 A. That is correct.

Q. You can put that one aside.

MR. WILKENS: Let me mark another one.

(Seth Exhibit 3, document

10:04:57 produced by Google, Bates stamp

SETH

GOO001-03037036 through 03037065, marked for identification, as of this date.)

10:04:55 Q. This is another document produced by Google in the litigation, with, starts with the Bates stamp GOO001-03037036, and it ends with 03037065.

10:05:34 Having had a chance to at least page through it, do you recognize this document, Mr. Seth?

A. Yes.

Q. Can you describe what it is?

10:06:15 A. It is a document that I produced, I believe in my third month at YouTube, to give the management team at both YouTube as well as Google a sense of what our long-term monetization strategy

10:06:36 could be.

Q. So you created this presentation?

A. Yes.

Q. And if you turn to the second

10:06:53 page of the presentation, which I think at

SETH

answer?

Q. Yes. If you understand the question, you can answer it.

10:14:54 A. This document that we produced was with very basic understanding and a limited strategy of various elements described here. I am not entirely sure that there was too much thought given to 10:15:20 exactly how things would get implemented down the road.

Q. Can you just explain your understanding of what "PVA for search results, PVs," means?

10:15:37 A. PV essentially stands for promoted videos. And it is the idea that a video owner, for example Warner Music, wanting to promote a Shakira video could go and somehow purchase advertising, or 10:16:02 promotions in this case, to promote that video on YouTube.

Q. And at the time of the presentation in March of '07, the spreadsheet shows that, or this chart 10:16:20 shows that you were predicting a total

actually, in effect, a signature on file for -- you know, so they file basically one DMCA notice, and then every time they use the tool, they're effectively amending, I believe -- I don't know if that's legally technically correct, but essentially updating the notice to include the additional content.

Q. Are you aware that my client, the Premier League, has sent DMCA notices for the removal of Premier League content?

A. I believe so.

Q. And you understand that the Premier League does not want its soccer content on YouTube?

A. I'm not personally familiar with their content, but that's my understanding.

Q. What's YouTube doing to actively or proactively scan for Premier League content?

A. So are you asking in the sense of the --

Q. What you were doing for --

A. For the RIAA?

Q. Correct.

A. I'm not aware of scans being done in this fashion for the Premier League.

Q. Why do you think YouTube was proactively scanning to remove RIAA-identified content, but not

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proactively scanning for the content.

How did you go about doing it in that case?

A. I think in this case it was just that, someone entering in, you know, maybe the word "Wheezer" and looking for their music videos or something like that.

Q. So using that methodology, when is the last time you recall YouTube engaging in proactive removal?

A. I don't recall when that was.

Q. This year?

A. Not to my knowledge.

Q. Could you put it in any time frame?

A. Certainly around the time this e-mail was sent. I don't know exactly the evolution.

And as I said earlier, I don't think it was a bright line moment in time when the practices changed. I think they evolved based on the needs of individual rights holders and the scale of the site.

Q. Did you participate in any discussions or communications within YouTube about whether or not to continue the practice of proactively scanning for content that appeared to infringe copyrights?

A. I'm not sure I would phrase it exactly as you have, but I'm sure I was probably involved in some discussions around our practices on these types of

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SETH

we also spoke briefly earlier about targeting advertising to keywords or different levels of advertising.

10:25:07 But just speaking about the search page monetization at a more general level, what kinds of monetization initiatives for the search page were undertaken while you were the head of

10:25:23 monetization at YouTube?

A. Two projects. One that was implemented very early on and literally had one Click To Play video ad or CTP video ad against search results. And the

10:25:59 second one was the larger initiative of integrating into Google AdWords and allowing the advertising community to buy advertising options against YouTube search as well.

10:26:18 That's as much detail as I can give you. Beyond that, I am not certain of all the details.

Q. And I think you mentioned earlier Matthew Liu as being in charge of

10:26:37 search-related monetization projects; is

SETH

Seth Exhibit 4.

(Seth Exhibit 4, document produced by Google, Bates stamp GOO001-01016844 through 01016845, marked for identification, as of this date.)

MR. WILKENS: And it's a document produced by Google in the litigation with the Bates stamp GOO001-01016844 through 01016845.

Q. Do you recognize this document, Mr. Seth?

A. I do.

Q. And does this refresh your recollection about why you undertook a classification of YouTube search queries?

A. From the people who are on the list or based on the people who are on the list, I believe that I undertook this exercise to help the business development team at YouTube figure out what verticals made sense for furthering partnership opportunities or personal partnership opportunities.

SETH

Q. And again, for the lay person, can you just describe what a vertical means?

10:30:01 A. I can give you a -- I can describe how this is done, and that may help you understand.

So what we did was took one day's worth of search queries performed on 10:30:24 the YouTube search. And then we used an algorithm that Google search team has built and utilizes, that they take a search query, and then it can look at the search query and classify it in a 10:30:47 particular vertical.

So if you had a health-related query or a medicine query, it may look at it, and based on how that algorithm works, it may say, this is related to the health 10:31:03 vertical.

That kind of classification system was run on all the queries for one day, and that's what produced this kind of analysis.

10:31:15 Q. So if I -- for me that was very

helpful.

If I look at the bottom of this -- these e-mails, the very end of the
10:31:29 document, is that where, where it says, "Music 26 percent" and continues down, is that a list of the kinds of verticals you were just referring to?

A. Yes. What this is -- what this
10:31:46 analysis further is telling you, that the demand from those search terms for what users are looking for roughly breaks down into these verticals.

Q. So 26 percent for music and 3.8
10:32:01 percent for movies, for example?

A. Correct. And this is not a precise algorithm. It is, you know, prone to error, yet, you know, directionally, provides you the right answers.

10:32:17 Q. And then, I guess if you look further up, the same e-mail at the very top, it says the e-mail that you had sent to Alex Ellerson and others on May 15th says that 47 percent of the top queries
10:32:44 fall under entertainment, right?

SETH

A. Yes.

Q. Do you see where it says that?

A. Yes. I think that was just a collection of various verticals combined together. Or at least that's how I would have done it. I don't know where that number came from, but I would surmise that I had added up a couple of these verticals together.

Q. And then Chris Maxcy, looks like the e-mail above that, in response to your e-mail, asks you for a further breakdown of entertainment.

A. That is exactly it, yes.

Q. That's what's reflected even further up at the very top of the page; is that correct?

A. That is correct.

Q. So that's a breakdown of what was in the 47 percent under entertainment?

A. That is correct.

Q. And those are also, I guess, just verticals at a different level, the entertainment/celebrities,

SETH

entertainment/clubs and nightlife; is that correct?

A. That's correct. Those would be described by this algorithm as subverticals.

Q. Those are coming from the Google algorithm you mentioned?

A. Exactly.

Q. Do you know if anything was done as a result or stemming from the analysis that you provided here?

A. No.

Q. Do you recall if there was any follow-up with you, based on the analysis that you sent in this e-mail?

MR. WILLEN: Objection to the form. Vague.

A. From my recollection, there were many conversations with various people in the business development team. I may have briefed some people on what this data suggests; but I wasn't involved in business development, and I had no idea how people took this data and what did

as well. As I indicated, the people are searching in French and British and Japanese and Indian content and zone.

10:43:25 Freshness is definitely important as well, as I highlighted here. And zone.

So just to summarize it, my intent was to just pick out a couple of key things, highlight them and then allow

10:43:39 people to draw conclusions from it on their own.

Q. And so looking at this analysis in Exhibit 5 and the analysis that we looked at a minute ago in Exhibit 4,

10:43:53 although different methods are applied to both, both analyses indicate that music -- that entertainment, including music and TV shows, is a popular search term, or popular search terms, correct?

10:44:13 A. Yes. It does indicate demand. It doesn't indicate what people are watching. Neither of these methods have a way to find that. But they certainly do suggest demand.

10:44:24 Q. They suggest what the users are

looking for, correct?

A. Correct.

Q. And if you look at the first page of the attachment to Exhibit 5, where it lists all -- begins listing all of the queries. Just so I understand how this works, and maybe we won't pick the first one, but maybe the third one, Paris Hilton, the number that comes after the comma, the 155769, what does that represent?

A. I believe that Paris Hilton and all synonyms related to Paris Hilton were looked for, you know, 1.5 million times, roughly.

Q. I think it might be --

A. Sorry, 155,000.

Q. And it appeared --

A. So the ordering here is the top query and all synonyms and so on.

Q. We can put that to the side.

THE WITNESS: Can I take a very quick bathroom break?

MR. WILKENS: Yes.

SETH

THE VIDEOGRAPHER: The time is 10:46 a.m., and we are going off the record.

10:46:03 (Whereupon, there is a recess in the proceedings.)

THE VIDEOGRAPHER: The time is 10:56 a.m., and we are back on the record.

10:56:36 Q. Hi, Mr. Seth.

If we can go back to Exhibit 4 for a minute.

A. Yes.

Q. Just looking at the group of 10:56:53 numbers at the top, maybe the first line, which says "Entertainment celebrities," and then it has a 184 then it has a 2.77 number.

Can you explain what the 2.77 --

10:57:10 A. It's a percentage point.

Q. It's a percentage.

A. The 184 is, from what I can recollect and that I think this e-mail suggests as well, is just a classification 10:57:22 number that reflects that first line.

SETH

Q. So -- and so the 2.77, the percentage number, what is that a percentage number of?

10:57:33 A. It says that the number of queries, this analysis that I did from the algorithm, number of queries for that given day or that set of queries, 2.77 percent of those queries fall into this

10:57:56 subcategory.

Q. Thank you. Thank you.

I think earlier you mentioned in the monetization world that you were working in at YouTube, there were two

10:58:08 search-related monetization projects, one being Click To Play video ad and one being this integration to AdWords.

Is that -- do I have that right?

A. That is correct.

10:58:18 Q. And these last two exhibits, Exhibit 4 and Exhibit 5, that are analyses or classifications of queries, are those -- were those related to the Click To Play video ad project in any way?

10:58:38 A. No.

SETH

Q. So --

A. These analyses had nothing to do with product development at all.

10:58:48 Q. You may have said this earlier, but can you just explain what the purpose of them was? Or what --

A. From what I can recall, these two analyses were to help the partnership

10:59:04 team determine where their focuses should lie.

Q. And when you say "the partnership team," are you referring to what content partners they should be

10:59:16 approaching?

A. That would be projecting what they were thinking. My goal was to just help them understand what the user demands were, and then they could use it any which

10:59:36 way they were. So one could guess that maybe that is what they were planning to do, but I don't know for a fact.

Q. But those, I guess the people that were are listed on Exhibit 4 and

10:59:51 Exhibit 5 that you were e-mailing with,

mischaracterizes what he said.

A. I believe that the one box solution was implemented. I do not know when or exactly how the implementation was done, but I do recall that it was implemented some time.

MR. WILKENS: Actually, this is a good time to break. We have to switch the videotape.

THE VIDEOGRAPHER: The time is 11:19 a.m. This ends tape number two of the videotaped deposition of Mr. Shashi Seth.

(Whereupon, there is a recess in the proceedings.)

THE VIDEOGRAPHER: The time is 11:30 a.m. This begins tape number three of the videotape deposition of Mr. Shashi Seth.

Q. Turning back to, well, our discussion a little bit earlier on the two search-related monetization projects that you mentioned, Click To Play video ad and integrating into AdWords. I know you said

SETH

you are not the expert on those two, but can you just describe in general terms those two projects?

11:30:34 A. The Click To Play video ad unit was, very simply, a single ad unit located in the top right corner of the search results page that was somehow tied to broad targeting or category-based 11:30:56 targeting in YouTube search.

So people could buy broad categories rather than keywords for the Click To Play video ad units. So for example, if you were Gatorade, you may 11:31:14 want to buy the sports categories and then maybe specifically the sports/soccer/tennis and so on.

That project ran for a fairly long period of time, and it did distinctly 11:31:35 well.

And the next project, where the details are a lot fuzzier for me, is the integration into AdWords, where broadly the idea was that people could log into 11:31:46 the AdWords system on Google.com, collect

a new tab that would say "YouTube" and then be able to somehow purchase keywords.

And I don't know exactly what the methodology was or how those were targeted, et cetera, but the end result would be that you would get small ad units or what we call promotion units in the right column of the YouTube search results. And that project, I believe, was launched September or October of last year, of 2008, well after I left.

Q. So going back to the one, the project -- the Click To Play video ad project. I think you said it was, it existed for a fairly long period of time.

Do you know approximately how long?

A. From maybe April of 2007 maybe even up to such time as the new project was launched. I'm not certain about the date, but it might be October of 2008.

Q. Okay. And is the Click To Play video ad you mentioned, is that the same thing as a search PVA ad?

SETH

I remember doing some broader study than the e-mail that we had here and which may have resulted in a presentation or two.

MR. WILKENS: This is Seth Exhibit 8. And it's a document produced by Google in the litigation. The Bates number GOO001-00237294 to 237295.

(Seth Exhibit 8, document produced by Google, Bates number GOO001-00237294 to 237295, marked for identification, as of this date.)

A. Uh-hum.

Q. Do you recognize this e-mail, Mr. Seth?

A. Yes.

Q. And at the very top it's an e-mail, the last in time e-mail from you to Steve Chen, with a cc to David Eun and Chad Hurley, correct?

A. That's correct.

Q. And does this e-mail relate to

SETH

the project that you were just talking about a moment ago?

MR. WILLEN: Objection to the

11:38:00 form, vague.

A. I think this was the start of the conversation, if I remember correctly. And I think what I'm doing is describing a methodology that one could adopt.

11:38:23 And then I believe, as time went by, we discovered that there were maybe simpler and better ways to get at the data and maybe -- it may even be that the question at hand may have changed

11:38:40 slightly; and so I believe we ended up with a completely different methodology than the one that I'm describing here. And I don't think we ever ended up using this methodology.

11:38:53 Q. Do you see I guess in the e-mail toward the bottom, where Steve Chen says, he's responding I believe to David Eun, he says he's cc'ing you on this e-mail, although I guess the cc isn't shown, for

11:39:10 whatever reason.

SETH

Do you see where he says, "We are trying to get to the bottom of the question regarding the value of premium content, and this will guide us where to focus. As Dave mentioned, should we focus on our user-generated content or should we continue pushing with large content partnership deals."

11:39:31 Do you see that?

A. Yes.

Q. And is that your understanding of the question you were asked to weigh in on, at least in the beginning of the project?

11:39:41

A. Yes, I think so. As it relates to this question, this is the methodology at the top of the page that I suggested.

But I'm also suggesting that from what I can recollect, I don't think we ever went down this path or used this methodology. My recollection says that we used a very different methodology.

11:39:53

Q. Can you -- at the very top of it mentions Palash and Julia.

11:40:11

SETH

Do you know who's being referred to there?

A. Palash and Julia are engineers at YouTube. Julia was specifically an engineer on the data team.

Q. What's her last name, by the way?

A. Peker, P-E-K-E-R.

Q. And what's Palash's last name?

A. No. No idea.

Q. Does --

A. I can't recall.

Q. Does Palash Nandy, N-A-N-D-Y, sound familiar?

A. Yes, yes, sounds familiar.

Q. So what team was he on? You said he was an engineer on what team?

A. He was an engineer -- he was on the team that provided or that built the recommendation engine, all the, you know, once you watch a video, at the end it comes two or three other videos that you may want to watch. That technology, I think, was built by Palash.

SETH

Q. And why did -- why were those the two people that you brainstormed with about this request from Steve Chen?

11:41:40 A. Both had interesting ideas on how we could approach the problem. And then, like I said, I think there's probably a dozen or more ways to get to the same answer, using different

11:41:58 techniques. And this was one such technique that we discussed and said may be a good place to start.

Q. And if you look at the first, I guess dash or bullet point.

11:42:11 A. Yeah.

Q. When it says, "Compare total view counts of PC, premium content, versus UGC content," what do you mean by "premium content"?

11:42:27 A. I think at that time we used partner content, professional content, premium content not only interchangeably, but often liberally, without having a particular meaning assigned to it. What

11:43:08 it meant, very simply, is a partner with

whom we had a contract to use their content on YouTube.

Q. And what did you mean by "UGC content"?

11:43:36

A. A user who isn't in the profession of creating video on a regular basis. They do it as a hobby, so to speak.

Q. So are premium content and -- are there videos -- at this time, I guess, are there videos on YouTube that would not fall within one of these two categories?

11:43:57

A. No. I'd say videos could be classified in one or the other category.

11:44:35

Q. So a video is either premium content from a partner with whom YouTube had a contract, or it was from a content owner -- I'm sorry, or it was from a user who wasn't in the profession of creating content, who didn't have a contract with YouTube?

11:44:53

A. Yes.

And one thing to think about here is that although that may not have

11:45:01

been the intent for this particular case, partners, in my opinion, fall both on the professional side as well as the UGC side. 11:45:17 So even if they weren't part of the User Partner program, they were a partner.

Q. And so videos of users that were in the User Partner program would have fallen on the premium content side of the 11:45:31 analysis?

A. Could be. I really cannot speculate to whether I was exactly thinking that when I wrote this e-mail, but just broadly speaking, partners would 11:45:41 include both professional as well as UGC partners.

Q. And then the next sentence where it says, "We will remove all premium content that was uploaded by users from 11:45:52 these counts to make sure we are comparing apples to apples," what did you mean by that?

A. I believe what I was alluding to was the scenario. I'll just describe the 11:46:12 scenario.

SETH

Imagine Shakira's video is owned by Warner Brothers. Just imagine for a second that that is true, that all copies 11:46:24 of that video or versions of that video uploaded by users who may not own the rights to that video, if they could be removed, it would be an apples to apples comparison.

11:46:41 Q. So from the UGC content category you are suggesting that you would remove the non-Warner version, Warner Brothers version of the Shakira videos and take those out of that bucket?

11:46:58 A. Count. Correct, yes.

Q. And then can you just explain for the next bullet, the purpose of the signals that you are suggesting there?

What they were meant to do in 11:47:19 the analysis?

A. Just give me a minute to just read through the whole thing so I can start building my analysis of why I -- we were going down this path. Okay.

11:48:31 So here, just to compare -- the

SETH

Yes. So what we were saying with the second bullet point is that if we adjust the UGC pool for own original
11:55:53 content, as far as YouTube could know, then do things become different.

(Seth Exhibit 10, document produced by Google, Bates number GOO001-02414976 to 2414980, marked
11:57:47 for identification, as of this date.)

MR. WILKENS: This is Seth Exhibit 10. And it's a document produced by Google, beginning with the
11:57:44 Bates number GOO001-02414976, ending in 2414980.

A. Okay.

Q. Do you recognize this document?

A. Somewhat, yes.

11:59:39 Q. And at least the last in time e-mail, the very top of the first page it is from you to Jordan Hoffner, Julia Peker and Palash Nandy, correct?

A. Uh-hum.

11:59:53 Q. And it's titled, The First Peek

SETH

At the Numbers.

Who is Jordan Hoffner?

A. He is the director of business development at YouTube.

Q. And why were you sending a first peek at the numbers to him?

A. Most likely because we may have had a hallway conversation about something, and it was in response to that.

I don't remember for sure.

Q. If you look down at sort of the middle of the first page, where it's an e-mail from Julia Peker that starts with, "Hey, Shashi, "and ends with "Let me know if you have questions."

Do you see that?

A. Yeah.

Q. And she says that she's attaching some numbers and that she's analyzing all views for the week of May 6th --

A. Right.

Q. -- do you see that?

Is there any particular reason

SETH

why that week was selected?

A. No. Just a random selection of one week.

12:01:18 Q. The analysis was of all views for that week?

A. One week, yes.

Q. That would --

A. And then one week period was 12:01:27 chosen, as that was what was possible to do in a fairly short period of time run. Running anything more than that would have taken many days.

Q. Is it your understanding that 12:01:41 refers to the week of May 6, 2007?

A. Right, yes.

Q. And the numbers that she says she's attaching, those are the numbers that appear on the last page of this 12:01:55 exhibit; is that right?

A. Yes. And I don't understand everything about this --

MR. FRANKS: There's no question pending. You answered the question.

12:02:10 Q. I guess sort of flipping back

between the first page and the last page, she says she "has total views used for premium partners only and views for
12:02:29 content that was taken down for copyright issues (some interesting numbers there)."

Do you understand why she included numbers for total views, views for premium partners only and views for
12:02:49 content that was taken down for copyright issues?

MR. WILLEN: Objection. Calls for speculation.

A. No, I have no idea.

12:02:54 Q. Now, if you look at the last page, you see on the left where it says, "All premium and copyright."

Is that referring to the three categories that Julia Peker mentioned in
12:03:23 the e-mail that we were just reviewing?

A. Yeah. This is what I don't understand.

MR. FRANKS: You want to look at this one, so you can see two at the
12:03:52 same time?

SETH

THE WITNESS: No, this is good.

Q. You may not want to write on the actual exhibit. You just want to see the commas?

12:03:59

A. Yeah.

MR. FRANKS: You can do it on mine. You can write the commas on there.

Q. I had the same desire.

12:04:14

THE WITNESS: Thank you.

MR. WILLEN: Sorry. What was the question?

MR. WILKENS: Yeah, whether -- I asked whether the words on the left, leftmost column of the last page, "all premium and copyrighted," correspond to the categories that are in Julia Peker's e-mail on the first page that we just talked about.

12:04:33

12:04:49

MR. WILLEN: Objection. Calls for speculation.

A. From what I can understand of the document, it breaks down into three buckets of all views of all content for

12:05:03

SETH

that one-week period, views for content that came from a list of partners under the line item Premium, and then a list
12:05:28 of -- or views of content that were removed from YouTube, for a number of reasons.

Q. And Julia says in the first page this is for copyright issues, correct?

12:05:45 MR. WILLEN: Objection. The document speaks for itself.

Q. You can answer the question.

A. That's what she says, yes.

Q. Now, just moving over a few
12:06:04 columns to the Count Videos column.

A. Uh-hum, yes.

Q. Is it your understanding that that represents the videos that were -- the number of videos that were viewed with
12:06:19 the views that are in the, I guess the first column of numbers?

MR. WILLEN: Objection to the form.

A. It refers to the actual number
12:06:31 of individual videos.

SETH

Q. In that bucket -- in each bucket?

A. That generated the number of views in the first column.

Q. Okay. And then, if you look one column further to the Average Views Per Video, am I correct that that represents the views -- the number of views in the first column divided by the number of videos in the Count Videos column?

A. That's correct.

Q. So that the average number of views for all videos was approximately 110 views?

A. Correct.

Q. And that the average number of views for all premium videos was 1,340?

A. Correct.

Q. And that the average number of views per video for the copyrighted bucket is 765, correct?

A. That is correct.

Q. And you -- and turning back to the first page, you forwarded this to

numbers on to Mr. Hoffner?

MR. FRANKS: Objection. Calls for speculation. Incomplete hypothetical.

12:09:42

A. I think, as I said in that e-mail, that this is very early analysis, and that's it. I'm guessing from the content of the e-mail, I would guess that was too early to start even thinking about any details at that point.

12:10:02

MR. WILKENS: This is Seth Exhibit 11. It's a document produced by Google with the Bates number GOO001-03241189 through 3241192.

12:10:52

(Seth Exhibit 11, document produced by Google, Bates numbers GOO001-03241189 through 3241192, marked for identification, as of this date.)

12:11:50

A. Yeah.

Q. And do you recognize this document, Mr. Seth?

A. Uh-hum.

Q. It's an, at least the top, the

12:12:01

SETH

first, last-in-time e-mail, the top e-mail on the first page, is from Julia Peker to Shashi Seth, with a copy to Jordan Hoffner and Palash Nandy. And in that first e-mail Julia Peker says that she's sending the same spreadsheet with numbers for favorites, comments and subscriptions.

Do you see that?

12:12:29 A. Uh-hum.

Q. And then, if you turn to the last -- the last two pages, you see at the top of the Bates numbered page beginning 3241191, the top there and extending over to the next page, 3241192, the same numbers that we were just discussing in Seth Exhibit 10, correct?

A. Correct.

Q. And then below that Julia Peker has added additional numbers, which she mentions on the first page, right?

A. Correct.

Q. And I believe these are the signals that we were talking about earlier for favorites, UGC content -- favorites

SETH

comments; is that correct?

A. Correct.

Q. And if you look on the -- well,

12:13:43 the columns of data here under the favorites analysis, for example, under Premium Content there's a count for the, I guess the total number of videos that were -- is that the total number of videos

12:14:08 that were favorited in the Premium Content bucket?

MR. WILLEN: Objection. Calls for speculation.

A. I believe the way the data is

12:14:25 laid out is that the first number falls under the count of users, that number of users. The second number comes from the count of videos. So those were the actual number of videos that, in this analysis,

12:14:40 were used.

And then the third number, the 115,027 number, is the one that reflects the number of times that somebody favorited that video --

12:14:56 Q. And --

SETH

A. -- those 7,678 videos.

Q. So all 7,678 videos were favorited in an aggregate number of 115,027 times, correct?

A. That's correct.

Q. The next number, it says Average Fave Per Video. I think that means average favorite for video?

A. That's correct.

Q. Is the number of videos divided by the number of -- the number of favorites divided by the number of videos, correct?

A. That's correct.

Q. So it's 14.98 times favorite per video, correct?

A. Correct.

Q. And that's for the Premium Content bucket, right?

A. That is correct.

Q. And then, if you go to the next bucket, the UGC -- what's called here the UGC Content bucket, the average number of favorites per video is 3.76; is that

correct?

A. That is correct.

Q. And just going further down to
12:16:01 the Comments Analysis, the average comments per video for premium content is 7.05, and it's -- and the average --

MR. WILKENS: Sorry, strike that.

12:16:13 Q. If you go down to the Comments Analysis for the premium content bucket the average comments per video is 7.05, correct?

A. That is correct.

12:16:21 Q. And then for the UGC content bucket, the average comments per video is 2.8, correct?

A. Correct.

Q. And for -- the very bottom here,
12:16:36 the Subscription Analysis, can you explain what a subscription is?

A. When a user subscribes to a video, they are subscribing both to the creator of the video or the user who
12:16:54 uploaded that video as well as the video

SETH

itself. And based on that subscription, they get notifications of what is happening with that user.

12:17:04 So every time a new video is uploaded by that user, you would get a notification, for example, an e-mail, that says, this user has uploaded a new video. Or if it's the video, you may get

12:17:20 notifications of, hey, there's a new comment, et cetera.

So it's a pretty important element as well, in terms of signals of how users interact with the video.

12:17:41 Q. And I guess underneath here there's a Premium Channels heading or subheading.

Do you know if there was any analysis done on any other categories or

12:18:00 buckets, like UGC channels?

MR. WILLEN: Objection to the form.

A. I believe this e-mail is -- I believe in this e-mail Julia has left out

12:18:34 the word UGC Count Subscribers, but that's

what it's meant to be, is that the first line item under the Subscription Analysis is meant to be for premium channels, and
12:18:47 the second one is supposed to be for UGC channels. And she may have left that out, but that's what it's meant to do, is to compare those two, much like how she's done it for the other categories.

12:19:04 Q. And do you know whether any further analysis of, along the lines of what's an Exhibit 10 and Exhibit 11, was done after Julia Peker sent Seth Exhibit 11?

12:19:33 MR. WILLEN: Objection to the form.

A. I don't recall.

Q. Do you recall reporting these numbers or -- to anyone at YouTube, other
12:19:54 than Jordan Hoffner?

A. No. Unfortunately, I do not recall.

MR. WILLEN: Is this a good time for lunch, or do you want to --

12:20:42 MR. WILKENS: Actually, it is a

SETH

A F T E R N O O N S E S S I O N

(Time noted: 1:12 p.m.)

S H A S H I S E T H , resumed and testified as follows:

EXAMINATION BY (Cont'd.)

MR. WILKENS:

THE VIDEOGRAPHER: The time is 1:12 p.m., and we are back on the record.

MR. WILKENS: Mark the next exhibit. This is number 12.

(Seth Exhibit 12, document produced by Google, Bates numbers GOO001-0943950 through 5943959, marked for identification, as of this date.)

MR. WILKENS: This is a document produced by Google in the litigation, beginning with the Bates number GOO001-0943950, ending 5943959.

Q. Do you recognize this document, Mr. Seth?

A. Yes.

Q. Is this a cover e-mail with a

presentation that you prepared?

A. Yes.

Q. And does this presentation

01:14:26 contain or refer to some of the data that we were talking about in Seth Exhibits 10 and 11?

A. Right. Some of that, however, I think the methodology for how this was

01:14:43 done was very different than the methodologies referred to in the prior exhibits.

Q. And can you explain how the methodologies differed?

01:14:57 A. So in this particular version, I believe what we did was looked at the search terms for a particular day. And then, using the algorithm that I described to you earlier about classifying search

01:15:21 terms, broke it down into various categories and used that as the baseline for figuring out where those buckets or categories fell in premium, as I refer to it here, where it says "UGC content."

01:15:45 It's based on a lot of

SETH

hypotheses, but that's what we had to go by.

Q. And when you were just talking a minute ago about segmenting the views into different buckets or types of content that's on page 3, on page 3 --

MR. WILKENS: Strike that.

Q. The methodology you were just referring to a moment ago that you applied in this analysis to -- where an algorithm was applied to develop these different breakdowns of content, is that reflected on page 3 of Exhibit 12?

A. That is correct.

Q. And then that same analysis is used on page 4 to indicate what percent of content that's being watched is premium content; is that correct?

A. What I'm referring to here in bullet points 1 and 2 is one of the exhibits that we talked about where Juliet Peker had summarized it in those three lines. The percent points are derived by that, the point 1 and point 2.

SETH

Q. And if you turn to page 5, where it says, "We also know that there is significantly more community interaction 01:17:23 with premium videos than UGC videos," do you see that?

A. I see that.

Q. The two bullets below those, the numbers in those bullets, are those also 01:17:34 derived from the analysis that we were looking at before from Julia Peker?

A. That is correct.

Q. So these are results that you --

MR. WILKENS: Strike that.

01:17:48 Q. So there are portions of Julia Peker's analysis that you put into this presentation and then provided to the individuals listed on the front of Seth Exhibit 12, correct?

01:18:00 A. That is correct.

Q. And did you also discuss the contents of this presentation with them?

A. Yes.

Q. And did they have questions 01:18:16 about the methodology?